

**IN THE UNITED STATE BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>IN RE:</b>	§	<b>CASE NO. 4:15-31086</b>
	§	
<b>UNIVERSITY GENERAL HEALTH SYSTEM, INC., et al.</b>	§	<b>CHAPTER 11</b>
	§	
<b>DEBTORS<sup>1</sup></b>	§	<b>JOINTLY ADMINISTERED</b>
	§	

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**SECOND APPLICATION FOR PAYMENT OF POST-PETITION  
ADMINISTRATIVE EXPENSE OWED TO COMMUNITY PATHOLOGY P.L.L.C.**

**THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.**

**REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEYS.**

**THIS MOTION HAS BEEN SET FOR HEARING ON MARCH 21, 2016  
AT 1:00PM.**

**TO THE HONORABLE LETITIA Z. PAUL,  
UNITED STATES BANKRUPTCY JUDGE:**

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<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: University General Health System, Inc. (2436), UGHS Autimis Billing, Inc. (3352), UGHS Autimis Coding, Inc. (3425), UGHS ER Services, Inc. (6646), UGHS Hospitals, Inc. (3583), UGHS Management Services, Inc. (4100), UGHS Support Services, Inc. (3511), University General Hospital, LP (7964), and University Hospital Systems, LLP (3778).

Community Pathology, P.L.L.C. (Community Pathology) hereby requests an Order granting allowance and payment of an administrative expense claim for outstanding fees invoiced for pathology services provided by Community Pathology to the Debtors, University General Health System, Inc., UGHS Autimis Billing, Inc., UGHS Autimis Coding, Inc., UGHS ER Services, Inc., UGHS Hospitals, Inc., UGHS Management Services, Inc., UGHS Support Services, Inc., University General Hospital, LP, and University Hospital Systems, LLP (collectively, the “Debtors”). This is its second administrative expense claim.<sup>2</sup>

This claim is made pursuant to 11 U.S.C. §503(b)(1)(A), and in support thereof, Community Pathology respectfully states as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This proceeding is a core proceeding pursuant to 28 U.S.C. §157. Venue is proper in this Court pursuant to 28 U.S.C. §§1408 and 1409.
2. The statutory predicate for the relief requested is section 503(b)(1)(A) of Title 11 of the United States Code (the “Bankruptcy Code”).

### **BACKGROUND**

3. On February 27, 2015 (the “Petition Date”), Debtors filed a petition for relief pursuant to Chapter 11 of the Bankruptcy Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas (the “Court”). Among the other Debtors in this jointly administered case is University General Hospital, L.P. (UGH LP). UGH LP entered several agreements with Community Pathology as part of normal business operations, two of which are the subject of this Application and more fully described below.

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<sup>2</sup> See Dkt. # 762 (first claim)

4. Histology Agreement: Prior to the Petition Date, Community Pathology and UGH LP entered the Histology Processing and Transcription Agreement (“Histology Agreement”), with an effective date of September 1, 2006.<sup>3</sup> The purpose of the Histology Agreement was to provide for quality pathology services at Debtors’ main hospital campus at 7501 Fannin Street, Houston, Texas at a reasonable cost to its patients, to promote efficient hospital operations, and to meet legal obligations related to the stabilization and treatment of patients. Under the Histology Agreement, Community Pathology provided, and continues to provide, specialist physician services and full-service clinical and administrative services to Debtors and their patients at the hospital. Specifically, Community Pathology provides clinical and histology transcription services for the benefit of Debtors’ patients at the hospital.<sup>4</sup> Community Pathology bills these patients (or payors under managed care contracts) directly for the services provided, except in cases of Medicare, Medicaid and other government-funded inpatient participants. For that group (Medicare, Medicaid, etc.), Community Pathology bills UGH LP on a monthly basis, who in turn submits billing on behalf of the patient to the applicable government entity for payment. The Histology Agreement was extended on two occasions, with a current expiration date of January 31, 2017.

5. UGH LP has not paid Community Pathology for the services provided by Community Pathology on behalf of the Medicare, Medicaid, and Tricare patients under the Histology Agreement for the post-Petition months October, November, and December 2015. Invoices for the time period of October 2015-December 2015 have been presented to UGH LP, for a total

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<sup>3</sup> The Histology Agreement and its Addendums were filed as Exhibit 1 to Dkt. 762 and are collectively referred to as the Histology Agreement.

<sup>4</sup> Histology is the science concerned with the minute structure of tissues and organs in relation to their function. Histology typically involves examination of a thin slice of tissue under a light microscope.

amount of \$19,916.07 due and owing.<sup>5</sup> A summary of the administrative claims and the redacted invoices are attached here as **Exhibit 1**.<sup>6</sup>

6. PSA: Community Pathology and UGH, LP also entered a Professional Services Agreement (“PSA”), effective on August 1, 2011.<sup>7</sup> Under the PSA, Community Pathology was retained to provide pathology services at Debtor’s main hospital campus at 7501 Fannin Street, Houston, Texas for a term of five (5) years. The PSA further provides for a Medical Director of Services, provided by Community Pathology, who is to provide oversight and administration of the clinical pathology services performed. While the PSA generally provides for UGH LP and Community Pathology to independently bill patients and each collect the charges due to them, with respect to services provided on behalf of Medicare/Medicaid patients, the parties agreed to a Medical Director Fee (“Fee”) of \$2,500 per month to be paid by UGH LP to Community Pathology. This Fee specifically covers the oversight and administration of the clinical pathology services performed by the hospital laboratory on behalf of the Medicare/Medicaid patients. The Fee is to be paid monthly and is due within thirty (30) days of the prior month’s admissions.

7. UGH LP has failed to pay for the Medical Director services provided by Community Pathology in December 2015. A Post-Petition invoice for December 2015 was presented to UGH LP, for a total amount of \$2,500. *See Exhibit 2*.

8. Debtors agreed that UGH LP was in default of its post-Petition obligations under the PSA and General Histology Agreements. UGH LP has not disputed the accuracy of the invoices due, of \$19,916.07 and \$2,500.00, for a total of \$22,416.07.

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<sup>5</sup> This Court signed an Order on January 11, 2016 allowing for \$68,981.55 as an administrative expense.

<sup>6</sup> Redactions were made for Protected Health Information (PHI).

<sup>7</sup> The PSA was filed under seal as Exhibit 3 to Dkt. # 762.

9. Community Pathology requests that UGH LP satisfy these administrative expense claims within five (5) business days of an order being entered granting this application.

**RELIEF REQUESTED AND ANALYSIS**

10. As a result of the PSA and Histology Agreement and Community Pathology's continued provision of pathology services post-Petition according to these agreements, Debtors continued to provide clinical pathology services to patients at its main hospital campus during the pendency of the Chapter 11 proceeding in this Court. In other words, the hospital operated without any interruption in the pathology services that would have otherwise been furnished to its patients or medical staff by virtue of its agreements with Community Pathology.

11. By this Application, Community Pathology and UGH LP request the entry of an Order approving the parties agreement to pay Community Pathology's administrative expense claim pursuant to section 503(b)(1) of the Bankruptcy Code for the services it provided under the PSA and General Histology agreements (the "Administrative Expense").

12. Section 503(b)(1)(A) of the Bankruptcy Code provides, in pertinent part:

After notice and a hearing, there shall be allowed, administrative expenses, other than claims allowed under section 502(f) of this title, including—

(1) (A) the actual, necessary costs and expenses of preserving the estate including—

(i) wages, salaries, and commissions for services rendered after the commencement of the case; and

\* \* \*

14. To qualify as an "actual and necessary cost" under § 503(b)(1)(A) of the Bankruptcy Code, a claim against the estate "must have arisen post-petition and as a result of actions taken by the trustee that benefitted the estate." *In re Home Interiors & Gifts, Inc.*, No. 08-31961-11-BJH, 2008 WL 4772102, at \*4 (Bankr. N.D. Tex. Oct. 9, 2008). "A prima facie case [entitling

the creditor to payment] under § 503(b)(1) may be established by evidence that (1) the claim arises from a transaction with the debtor-in-possession; and (2) the goods or services supplied enhanced the ability of the debtor-in-possession's business to function as a going concern.” *Toma Steel Supply, Inc. v. TransAmerican Natural Gas Corp. (In re TransAmerican Natural Gas Corp.)*, 978 F.2d 1409, 1416 (5th Cir. 1992). It is undisputed that the administrative expenses sought here arise from post-petition transactions between Community Pathology and Debtors. A claimant's performance of a pre-petition contract and the debtor's acceptance of that performance establishes a post-petition transaction. *See, e.g., In re Goody's Family Clothing, Inc.*, 401 B.R. 656, 671 (D. Del. 2009) (citing *In re White Motor Corp.*, 831 F.2d 106, 110 (6th Cir. 1987)). As indicated above, Community Pathology's services enhanced the Debtors' ability to function as a going concern by ensuring the continued provision of clinical pathology services for patients cared for at its main hospital campus.

15. Community Pathology's post-petition Services under the PSA and General Histology Agreements constitute “actual and necessary costs” of the estate and, therefore, are entitled to priority before other, unsecured nonpriority claims. *See* § 507(a)(1); *Total Minatome Corp. v. Jack/Wade Drilling, Inc. (In re Jack/Wade Drilling, Inc.)*, 258 F.3d 385, 387 (5th Cir. 2001).

**WHEREFORE**, Community Pathology, P.L.L.C. requests entry of an Order: (i) allowing it an Administrative Expense Claim in the total amount of \$22,416.07 pursuant to section 503(b)(1) of the Bankruptcy Code; (ii) directing the Debtors to pay Community Pathology, P.L.L.C.'s Administrative Expense Claim within five (5) days of the Court's order granting this application, and prior to any distribution or payment by the Debtors to holders of claims that are junior in priority to the Administrative Expense pursuant to section 507 of the Bankruptcy Code; and (iii) such other and further relief as is just and equitable.

**DATED:** February 24, 2016

Respectfully submitted,

**FERNELIUS ALVAREZ SIMON PLLC**

By /s/ Graig J. Alvarez

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ATTORNEYS FOR  
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Baylor Pathology Consultants, and  
Community Pathology, P.L.L.C.

**CERTIFICATE OF SERVICE**

I hereby certify that all attorneys of record who have consented to electronic service are being served this 24th day of February 2016, with a true and correct copy of this document via the Court's CM/ECF system, and that this motion was otherwise served by ECF, email, or first-class United State mail (without exhibits by email or mail, which will be mailed or emailed upon request).

/s/ Kara Stauffer Philbin  
Kara Stauffer Philbin

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SOLIC CAPITAL ADVISORS, LLC	ATTN: NEIL LURIA & MATTHEW E. RUBIN	1603 ORRINGTON AVE., SUITE 1600		EVANSTON	IL
RESOURCES, INC.	C/O SINGER & LEVICK, PC	ATTN: MICHELLE E. SHIRO, ESQ.	ROAD, SUITE 140	ADDISON	TX
ST. JUDE MEDICAL S.C. INC	ATTN: LEGAL DEPT.	22400 NETWORK PLACE		CHICAGO	IL
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STATE SECURITIES BOARD	SECURITIES COMMISSIONER	208 E. 10TH ST., 5TH FLOOR	PO BOX 13167	AUSTIN	TX
SUCCESS HEALTHCARE, LLC	C/O BUCHALTER NEMER, P.C.	ATTN: MARY H. ROSE	BLVD, SUITE 1500	LOS ANGELES	CA
SUMMER ENERGY, LLC	ATTN: LEGAL DEPT.	PO BOX 660938		DALLAS	TX
SERVICES, LLC D/B/A EQUALIZERCM	OZBURN, LLP	ATTN: G. JAMES LANDON	SPRINGS RD., SUITE	AUSTIN	TX
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ACCOUNTS	ATTORNEY GENERAL	DIVISION MC 008	PO BOX 12548	AUSTIN	TX
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COMMISSION	BROWN-HEATLY BUILDING	4900 N. LAMAR BLVD.		AUSTIN	TX
COMMISSION	GENERAL'S OFFICE	ATTORNEY GENERAL	COLLECTIONS 12548- MC	AUSTIN	TX
THE ARENA GROUP, L.P.	MANAGEMENT CORPORATION	C/O TRACY FINK	RD., SUITE 500	HOUSTON	TX

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COMMISSION	100 F STREET, NE			WASHINGTON	DC
TREASURY	INTERNAL REVENUE SERVICE	ATTORNEY	OFFICE	LOUISIANA	HOUSTON TX
UNIVERSAL MEDIA GROUP LLC	ATTN: ANDERSON TOBIN, PLLC	C/O J. SETH MOORE	TOWER	RD., SUITE	DALLAS TX
UNSECURED CREDITORS COMMITTEE	LOCKE LORD LLP	ATTN: ELIZABETH M. GUFFY & W. STEVEN BRYANT	600 TRAVIS STREET, SUITE 2800	HOUSTON	TX
UPSHOT SERVICES LLC	DRIVE, SUITE 112			DENVER	CO
SERVICES	MEDICAID SERVICES	ATTORNEY	OFFICE	LOUISIANA	HOUSTON TX
VFC PARTNERS	C/O HALEY & OLSEN, P.C.	ATTN: BLAKE RASNER	MILLS DRIVE, SUITE	WACO	TX
VITAL NEWEIGH CONTROL, INC.	ATTN: LEGAL DEPT.	4009 RICHMOND AVE.		HOUSTON	TX
W. L. GORE & ASSOCIATES	ATTN: LEGAL DEPT.	555 PAPER MILL ROAD		NEWARK	DE
WHITE OAK ASSET FINANCE, LLC	LLP	C/O MICHAEL FRIEDMAN	THE AMERICAS,	NEW YORK	NY
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WINSTEAD PC	ATTN: LEGAL DEPT.	500 WINSTEAD BLDG.	ST.	DALLAS	TX
		ATTN: FRANK ALVAREZ,			
X-SPINE SYSTEMS, INC.	C/O QUINTAIROS, PRIET, WOOD & BOYER, P.A.	KIMBERLY A. WILSON & BRENT W. MARTINELLI	1700 PACIFIC AVE, SUITE 4545	DALLAS	TX

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**IN THE UNITED STATE BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>IN RE:</b>	§	<b>CASE NO. 4:15-31086</b>
	§	
<b>UNIVERSITY GENERAL HEALTH SYSTEM, INC., et al.</b>	§	<b>CHAPTER 11</b>
	§	
<b>DEBTORS<sup>1</sup></b>	§	<b>JOINTLY ADMINISTERED</b>
	§	

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**PROPOSED ORDER ON SECOND APPLICATION FOR PAYMENT OF POST-  
PETITION ADMINISTRATIVE EXPENSE OWED TO  
COMMUNITY PATHOLOGY P.L.L.C.**

**On this day,** the Court considered the *Second Application for Payment of Post-Petition Administrative Expense* (Dkt. \_\_\_\_ ) filed by Community Pathology, P.L.L.C. on February 24, 2016, and seeking payment on administrative expense owed to Community Pathology, P.L.L.C. (“Community Pathology”) by University General Hospital, LP. This Court, having considered the Motion, any objections or opposition to the Motion, the evidence in support thereof, hereby **ORDERS**

1. The Motion is GRANTED as set forth herein;
2. Community Pathology shall be allowed its post-petition administrative claim consisting of \$2,500.00 (December 2015) owed on the Medical Directorship agreement;
3. Community Pathology shall be allowed its post-petition administrative claim consisting of \$19,916.07 (October-December 2015) on the Histology Processing agreement;

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<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: University General Health System, Inc. (2436), UGHS Autimis Billing, Inc. (3352), UGHS Autimis Coding, Inc. (3425), UGHS ER Services, Inc. (6646), UGHS Hospitals, Inc. (3583), UGHS Management Services, Inc. (4100), UGHS Support Services, Inc. (3511), University General Hospital, LP (7964), and University Hospital Systems, LLP (3778).

4. UGH LP shall pay Community Pathology the approved administrative claims herein by mailing payment in full to its counsel of record, within five (5) business days of the Court's order granting its Motion, and prior to any distribution or payment by the Debtors to holders of claims that are junior in priority to the Administrative Expense pursuant to section 507 of the Bankruptcy Code.

Dated: \_\_\_\_\_

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UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATE BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>IN RE:</b>	§	<b>CASE NO. 4:15-31086</b>
	§	
<b>UNIVERSITY GENERAL HEALTH SYSTEM, INC., et al.</b>	§	<b>CHAPTER 11</b>
	§	
<b>DEBTORS<sup>1</sup></b>	§	<b>JOINTLY ADMINISTERED</b>
	§	

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**NOTICE OF HEARING ON MOTION FOR PAYMENT OF POST-PETITION  
ADMINISTRATIVE EXPENSE OWED TO COMMUNITY PATHOLOGY P.L.L.C.**

Please Take Notice that a hearing on the Motion for Payment of Post-Petition Administrative Expense Owed to Community Pathology, P.L.L.C. by University General Hospital, LP will be held on **March 21, 2016 at 1:00 p.m.** (Houston Time, CST) before the Honorable Letitia Z. Paul, United States Bankruptcy Judge, 515 Rusk Avenue, 4<sup>th</sup> Floor, Courtroom 401, Houston, Texas 77002.

**DATED:** February 24, 2016

Respectfully submitted,

**FERNELIUS ALVAREZ SIMON PLLC**

By /s/ Kara Stauffer Philbin

Graig J. Alvarez  
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State Bar No. 24001647  
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<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: University General Health System, Inc. (2436), UGHS Autimis Billing, Inc. (3352), UGHS Autimis Coding, Inc. (3425), UGHS ER Services, Inc. (6646), UGHS Hospitals, Inc. (3583), UGHS Management Services, Inc. (4100), UGHS Support Services, Inc. (3511), University General Hospital, LP (7964), and University Hospital Systems, LLP (3778).

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ATTORNEYS FOR  
Baylor College of Medicine,  
Baylor Pathology Consultants, and  
Community Pathology, P.L.L.C.

**CERTIFICATE OF SERVICE**

I hereby certify that all attorneys of record who have consented to electronic service are being served this 24<sup>th</sup> day of February 2016, with a true and correct copy of this document via the Court's CM/ECF system, and that this notice of hearing was otherwise served by ECF or first-class United State mail on the attached service list.

/s/ Kara Stauffer Philbin  
Kara Stauffer Philbin